

EXHIBIT C

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of:

MARITIME COMMUNICATIONS/LAND MOBILE, LLC:
Participant in Auction No. 61 and Licensee of Various Authorizations in
the Wireless Radio Services; Applicant for Modification of Various
Authorizations in the Wireless Radio Services

Applicant with ENCANA OIL AND GAS (USA., INC.; DUQUESNE
LIGHT COMPANY; DCP MIDSTREAM, LP; JACKSON COUNTY
RURAL MEMBERSHIP ELECTRIC COOPERATIVE; PUGET
SOUND ENERGY, INC.; ENBRIDGE ENERGY COMPANY, INC.;
INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN
POWER AND LIGHT COMPANY; DIXIE ELECTRIC
MEMBERSHIP CORPORATION, INC.; ATLAS PIPELINE-MID
CONTINENT, LLC; DENTON COUNTY ELECTRIC
COOPERATIVE, INC., DBA COSERV ELECTRIC; AND
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

For Commission Consent to the Assignment of Various Authorizations
in the Wireless Radio Service

MO&O
FCC 18-168

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos.¹
0004030479, 0004144435,
0004193028, 0004193328,
0004354053, 0004309872,
0004310060, 0004315903,
0004315013, 0004430505,
0004417199, 0004419431,
0004422320, 0004422329,
0004507921, 0004153701,
0004526264, 0004636537,
and 0004604962

To: Marlene H. Dortch, Secretary
Attn: The Commission and Office of General Counsel

**INITIAL PETITION FOR RELIEF INCLUDING
UNDER 47 USC §405 OF FCC 18-168:
REQUESTS FOR:**

- (1) COMMENCING AN ECFS DOCKET ON (4) AND (5)
- (2) CORRECTIONS, REISSUANCE & RECONSIDERATION
- (3) APPLICATION OF STATUTE OF LIMITATIONS BARS
- (4) ADR UNDER 47 C.F.R. § 1.18 AND 9 U.S.C. §§ 201-208
- (5) SUPPORT FOR NATIONWIDE AMTS SET-ASIDE FOR
NATIONWIDE SMART TRANSPORT INCLUDING PTC

Warren Havens and
Polaris PNT PBC
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December 10, 2018

¹ Some dismissed after Docket 11-71 commenced.

This filing is by Warren Havens for his own interests, including his ownership and other interests in the “Havens” companies described in the *Memorandum Opinion and Order*, FCC 18-168, released November 29, 2018 (the “Order”) and by Polaris PNT PBC, a Delaware statutory Public Benefit Corporation founded and owned by Havens (“Polaris”) (together, “Petitioner”). This is not submitted for those companies or their current receiver noted in the Order. Polaris holds certain assignments of interests and claims from Havens, and by that shares in legal standing Havens has in this and other FCC matters. (See *Sprint v. APCC*, 554 U.S. 269 (2008)). Havens and Polaris are addressed in the Order and have standing and interest to challenge the Order and to submit requests and suggestions regarding the Order under the legal-standing standards that apply to FCC adjudication proceedings as an existing party in the captioned proceeding, as a “party aggrieved,” and under the US Constitution’s First Amendment.

This is an initial response to the Order filed well before the 30-day deadline for reasons indicated herein including in Sections 1 and 2. Petitioner plans to submit additional pleadings concerning the Order on a timely basis.

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² “Gardner” factors extension of the 30-day period. *Gardner v FCC*, 530 F.2d 1086 (1970)

(1)
COMMENCING AN ECFS DOCKET ON (4) AND (5) BELOW

Petitioner requests that the Commission or the Wireless Bureau issue a public notice for comments on items (4) and (5) herein since they involve matters of broad public interest, and a public notice may provide to the Commission and Bureau useful information on the subject of item (5) which is a major topic raised in the Order.

Petitioner has supported this idea in flings before the FCC and papers and presentations in the market, for two decades. These were the core purposes of companies founded and previously operated by Petitioner. E.g., see <http://www.terranautx.com>, and <https://ecfsapi.fcc.gov/file/7521065017.pdf> (“US Advanced Railroad Wireless Using PTC as a Foundation.” January 2014, v2”).

(2)
CORRECTIONS, REISSUANCE, & RECONSIDERATION

Corrections and Reissuance (and grant in part has in fact been decided).

Petitioner asks that the FCC re-issue, with a new date (and thus there would be a new 30-day time period for petitions under 47 USC §405) the Order such that it has Ordering language regarding the principal appeal filings for Warren Havens (Petitioner) submitted by attorneys at the Lowenstein Sandler law firm (Jeff Blumenfeld was the lead attorney) of the Order FCC 15M-14 (by the former ALJ, Richard Sippel). Without Ordering language, as to these principal appeal filings, the Order is not effective, or at least its effectiveness is at issue, assuming it did mean to dispose of all of the filings challenging FCC 15M-14.

The Order should also state in the ordering-clause section what its contents show: that the Commission, after review of the extensive record on appeal pending for 3.5 years, does not find any character -qualification issues, but refers back to a delegated authority (a “separate” team at the Enforcement Bureau) to review what has been before the Commission (with other matters

noted in the Order that have been pending even longer where no character qualification findings have been made, either).³

The Order should also correct several other major apparent errors, in part listed below, and state that it *grants in part* the challenges filed for or by Petitioner of FCC 15M-14 as to several key issues shown in those challenges and now agreed to by the Commission including (a), (b), and (c) below.

(a) 15M-14's Order at the end on character-issue referral was wrong to assert rule §1.251(f)(3) (regarding a summary decision request found improper) as support (the rule does not deal with character to hold FCC licenses in its language or in the description of its purposes when the Commission adopted the rule);

(b) The summary decision request described in the Order and in 15M-14 was not the work or filing of Petitioner (it was by an established attorney at law, with officer-of-the-court duties independent of any input Petitioner may have had) (for which the FCC has implemented rules 1.52 and 1.24, if the FCC finds a filing or action by an attorney to be improper).

(c) The section in 15M-14 that found improper FOIA actions and related protective order matters is substantially in error based upon the recent grant in part by the Commission of an appeal of the key FOIA request described in 15M-14: see FCC *MO&O* 15-184 re FCC FOIA Control No. 2014-664. (See also Petitioner's recently filed appeal of this *MO&O* as to what it did not grant).

³ The ALJ Richard Sippel provided no hearing, even informal, on the charges and issues in his Order FCC 15M-14, the Commission has found no issues in this Order after 3.5 years, and the special EB team will now take a look. Petitioner asserts that this involves major violations of minimum due process of law, which will be a major issue presented in the more formal petition by Petitioner noted herein to be timely submitted.

(d) The Arizona court FRCP 11 decision cited specifically by the Order did not attribute to Petitioner blame as the Order suggests in error. (Also see Appendix 1 below: it is contrary to Commission policy to consider such a non-FCC matter.)

(e) The civil contempt order from the California court against Petitioner is subject to a federal habeas court challenge filed in a district court and to be submitted to the Ninth Circuit at a date this month, on the basis that the order violated various federal law and is void. (Also see Appendix 1 below: it is contrary to Commission policy to consider such a non-FCC matter.).

(f) Other factual errors in the Order are also apparent. (I do not address herein errors of law but will do so in the further petition noted herein.)

Error in required service: Reissuance with a new date is also proper since an Order of this kind must be served upon the parties affected and that includes Petitioner. See *Gardner v FCC*, 530 F.2d 1086 (1976) (the party affected entitled to notice, as explicitly required by section 6(d) of the Administrative Procedure Act and in light of the established Commission practice of providing such notice, under the principle that an agency is bound to obey its own rules). While an FCC staff person emailed to me (Petitioner) a copy of the Order, I do not use general email where anyone can email to me at my active email, to reduce unwanted email and clutter. (I set active email in accord with persons I regularly deal with, and for all other incoming email I use filters where I check those periodically). In any case, email is not a legal service method under FCC rules unless it is agreed to, and I do not agree to email service.

Reconsideration matters.

Petitioner intends to timely submit a petition for reconsideration showing factual and legal errors and omissions in the Order (those above if not corrected, and more substantial ones) that, under relevant legal standard, call for reversal of the holdings, suggestions, descriptions and dicta in the Order. However, Petitioner first seeks the correction and reissuance described above.

Appendixes 2 and 3 below indicate some of the concerns Petitioner plans to address in this forthcoming petition for reconsideration.

(3)
APPLICATION OF STATUTE OF LIMITATION BARS

Petitioner asserts that a time bar clearly applies as to any forfeitures in relation to the Order, applied to Petitioner or the “Havens companies” described in the Order. This is shown in Appendix 1 below.

In addition, regarding time bars, or proper time limits (an “equitable prudential time bar”), which under the Order the FCC may pursue, in an inquiry proceeding or otherwise, any “character qualification” (to hold FCC licenses, or apply for licenses -- as opposed to what is meant in rule 1.251(f)(3) -which is about “character” conduct in a hearing, if a summary decision pleading filed is seemed sufficiently improper)⁴, Petitioner asserts that three years since the issuance of FCC 15M-14 in the spring of 2015 is the limit, and that time has passed. Petitioner intends to demonstrate this in further legal arguments in the petition for reconsideration noted in Section (2) above, but at this time submits the following:

From: Yale Law School Legal Scholarship Repository, Faculty Scholarship, 1-1-1957, *Character and Candor Requirements for FCC Licensees*.by Ralph S. Brown Jr. (underlining added):

[In A] proceeding in which the Commission was exploring both the possible control of Dumont by Paramount Pictures, and the proposed transfer of control of American Broadcasting to United Paramount Theatres...involved...antitrust matters. It announced that ordinarily, with respect to applicants who were "existing licensees with records as broadcasters," it would exclude antitrust violations not directly

⁴ That is the sole rule cited in FCC 15M-14 dealing with “character qualification.” The Order agreed with Petitioner that this rule is not applicable to the Ordering language in FCC 15M-14. FCC 15M-14 cited no other rule that, by its content or intent, or use in any precedent, supports either FCC 15M-14 (as to its two Orders) or the subject Order of this filing. See Appendix 3 below.

involving radio communications if they had occurred more than three years before the application was filed.^{20/}

^{20/} *Paramount Pictures, Inc.*, 8 R.R. 135 (1952);

In the Communications Act, under 47 USC §313(b), a party found in violation of federal antitrust law, in business or actions regulated by the FCC, shall be subject to license revocation and license-application refusal. This is the maximum penalty to a licensee or license applicant. License revocation and application bar is automatic under §313 if the party is found by a court or SEC to have violated antitrust law in FCC regulated matters. The Paramount Pictures case cited above sets a three-year time bar regarding FCC proceedings against the licensee for “antitrust violations not directly involving radio communications.” Licensing is based upon competition, as shown in the 1996 Telecom Reform Act, based on limited supply of radio spectrum usable for communications. Thus, a party that violated antitrust law violates this foundation of spectrum licensing. For these reasons, this three-year time bar should apply to any other type of licensee or license applicant “basic character qualification” -- whether the party’s actions at issue are in FCC regulated matters or not. The actions at issue in the Paramount case, above, were not, and the three-year time bar was set. For actions before the FCC, the time bar should be less or no more than the three years, since spectrum licensing actions are directly before the FCC and also subject to any challenges under 47 USC §309(d) by any party with private interest or who may assert forms of “private attorney general” public interests. The FCC must act timely on matters directly before it under well-established principles of not inequitably prejudicing the subject party or parties, as well as to timely decide on spectrum licensing matters to advance use of scarce, limited spectrum resources. Congress has required the FCC to decide on petitions for reconsideration of FCC licensing decisions within 90 days in 47 USC §405. Three years is 12 times that, and should be the maximum.

Since it has been well over three years after FCC 15M-14 and the release of the subject Order, Petitioner asserts that the FCC cannot proceed with any adverse actions indicated in the Order or otherwise related to FCC 15M-14 against Petitioner (on this time-bar basis alone).

As to other actions of Petitioner that the Order attributed to Petitioner as improper, all of which preceded FCC 15M-14, they are all either (i) not attributable to Petitioner (but are actions of others, including licensed attorneys at law, under professional duties which Petitioner did not interfere with and which were not improper if objectively examined), or (ii) otherwise not wrongful. These are also outside of this three-year equitable time period based on the FCC precedent above.

(4)
ADR UNDER 47 CFR 1.18 AND UNDER 9 USC §§ 201-208

Petitioner requests that if the FCC proceeds with any inquiry or other actions described in the Order, or it pursues the requests outlined in (5) below, that alternative dispute resolution (or conference and resolution) be implemented under FCC rule §1.18(a)⁵ and in accord with the “New York Convention” - a part of the Federal Arbitration Act codified in 9 USC §§201-208, since the AMTS spectrum involved, and the transportation applications involved (as indicated in (5) below) clearly extend to radio services beyond the US land and territorial sea boundaries, and also deal with foreign-flag transportation vehicles in US ports and hubs. The “New York Convention” is a multi-national convention formulated and signed, by treaties, by most major-trading nations including the United States. See: <http://www.newyorkconvention.org/>

⁵ See, e.g., the Commission’s *MO&O*, FCC 00-112, In the matter of Amendment of...Commission's Rules... Concerning the Use of Alternative Dispute Resolution Procedures...: “[T]he Commission has had a long established ADR program and policy statement encouraging the use of ADR in Commission administrative proceedings and proceedings in which the Commission is a party (see 47 C.F.R. § 1.18).”

(5)
**SUPPORT FOR NATIONWIDE AMTS SET-ASIDE
FOR NATIONWIDE SMART TRANSPORT INCLUDING PTC**

While Petitioner does not understand or agree with some assertions, suggestions and rationales in the Order as to use and the importance of use of AMTS radio spectrum for “Positive Train Control” or “PTC,” Petitioner (i) does agree that AMTS spectrum is especially suitable for what most railroads and FCC staff commonly call PTC and what Petitioner would call, more generally, more advanced railroad wireless, for which actual PTC wireless (a simple form of signaling with only small data and spectrum capacity needs) may serve as a foundation. E.g., see Petitioners presentation here: <https://ecfsapi.fcc.gov/file/7521065017.pdf> (“US Advanced Railroad Wireless Using PTC as a Foundation.” January 2014, v2”); and (ii) has focused for several decades on advanced radio-based communications and PNT (positioning, navigation and timing) for nationwide “intelligent” or “smart” transportation systems.

Petitioner, speaking for his own interests (see top of this filing) and capabilities, thus supports a proceeding to explore use of substantial amounts of AMTS spectrum to be set aside for nationwide smart transportation systems including railroad PTC (as the term means for actual PTC safety functions and for the broader advanced railroad wireless noted above), on terms and conditions that reflect the public interest involved.

There are Commission precedents that may be considered for these purposes by the Commission along with parties with direct and indirect interests. Petitioner proposes above commencement of an ECFS docket for this purpose and use of ADR for this purpose, for resolution of issues involved with AMTS spectrum as currently licensed, and for matters in the Order.

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Respectfully submitted,

WARREN HAVENS, and POLARIS PNT PBC

A handwritten signature in blue ink, appearing to read "Warren Havens".

Warren Havens,
Individually

A handwritten signature in blue ink, appearing to read "Warren Havens".

Warren Havens
President, Polaris PNT PBC

Contact information is on the Caption page.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing was prepared by me and that the factual statements and representations contained herein known to me are true and correct.



Warren Havens

December 10, 2018

APPENDIX 1

Regarding FCC rule § 1.80 and applicable exclusions.

Under rule 1.80(d), the Petitioner Warren Havens does not hold a current FCC license (and does not currently manage or operate any FCC license), and thus no forfeiture can be assessed.

Under 1.80(c), the 1-year time bar below also applies as to all events alleged or suggested in the Order regarding actions by Petitioner subject of the described inquiry.

Thus, no forfeitures action may be pursued.

The same time bar would apply to the “Havens companies” described in the Order.

47 CFR 1.80 - Forfeiture proceedings

Excerpts with underlining added.

(This rule implements 47 USC §503 in the Communications Act.)

§ 1.80 Forfeiture proceedings.

(a) Persons against whom and violations for which a forfeiture may be assessed. A forfeiture penalty may be assessed against any person found to have:

(1) Willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument of authorization issued by the Commission;

(2) Willfully or repeatedly failed to comply with any of the provisions of the Communications Act of 1934, as amended; or of any rule, regulation or order issued by the Commission under that Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding on the United States;

(3) Violated any provision of section 317(c) or 508(a) of the Communications Act;

(4) Violated any provision of section 227(e) of the Communications Act or of the rules issued by the Commission under section 227(e) of that Act; or

(5) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code.

(6) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

Note to paragraph (a):

A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1) through (4) of this section shall not

apply to conduct which is subject to a forfeiture penalty or fine under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 364(a), 364(b), 386(a), 386(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

(b) Limits on the amount of forfeiture assessed.

[****]

(c) Limits on the time when a proceeding may be initiated.

(1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, “date of commencement of the current license term” means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(2) In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.

(3) In the case of a forfeiture imposed under section 227(e), no forfeiture will be imposed if the violation occurred more than 2 years prior to the date on which the appropriate notice is issued.

(4) In all other cases, no penalty shall be imposed if the violation occurred **more than 1 year prior** to the date on which the appropriate notice is issued.

(d) Preliminary procedure in some cases; citations.

Except for a forfeiture imposed under subsection 227(e)(5) of the Act, no forfeiture penalty shall be imposed upon any person under this section of the Act if such person **does not hold a license**, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

[****]

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APPENDIX 2

In addition to other parts of this Petition showing reasons for relief as to the subject Order, the underlined parts below indicate good cause for relief. These indications will be explained in Petitioner's more formal petition for reconsideration petition plans described above.

From: FCC 90-195, § FCC Red No.11, POLICY STATEMENT AND ORDER, Released May 11, 1990, by the Commission (In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Part 1. the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees. and Licensees. And the Reporting of Information Regarding Character Qualifications).

(Petitioner has good cause for relief as to matters below not underlined, but the items underlined can more readily be seen, and are thus first indicated here. Also, Petitioner *denies any* misconduct before the FCC or outside of the FCC indicated in the Order or in any other FCC decision or release. Also see Appendix 3 below.)

5.We will continue to look at the kinds of factors set forth in the Character Policy Statement in making determinations in particular cases, e.g., the willfulness of the misconduct, the frequency of the misconduct, the currentness of the misconduct, the seriousness of the misconduct, the nature of the participation (if any) of managers or owners, efforts made to remedy the wrong, overall record of compliance with FCC rules and policies, and rehabilitation.^{4/} See 102 FCC 2d at 1227-29.

[****]

7. We continue to believe that it is appropriate to refrain from making licensing decisions based on mere allegations of relevant non-FCC misconduct, even where those allegations have resulted in an indictment or are otherwise in the process of being adjudicated by another agency or court. Character Policy Statement, 102 FCC 2d at 1204-05

[****]

8. Generally, we do not intend to change our policies regarding the case-by-case determination of whether an existing licensee, designated for hearing on character issues with respect to one license, may buy or sell other licenses or have other authorizations renewed. See Character Policy Statement, 102 FCC 2d at 1223-25: TransferabilityofBroadcastLicenses,33RR2d126(1983).

[****]

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APPENDIX 3

The article quoted from below, including in these quotes, discuss a major failure by the Commission of licensee-character-qualification standards and applications. Petitioner presents this to make a point in this Petition, summarized after the excerpts.

Assuming the author is reasonably accurate (and that the Benton Foundation is reasonably responsible in publishing this article online),⁶ the following illustrates that the FCC is not a model of integrity or fairness in formulating and applying FCC “licensee character qualification” polices or standards, whether under Fifth Amendment and Fourteenth Amendment due process and equal standards, or Supreme Court case law, or common-man citizen standards.

From: Southern Journal of Policy and Justice, Vol. XII, HOW THE FCC SUPPRESSED MINORITY BROADCAST OWNERSHIP, AND HOW THE FCC CAN UNDO THE DAMAGE IT CAUSED, by David Honig, President Emeritus and Senior Advisor, Multicultural Media, Telecom and Internet Council (MMTC; until 2014, known as the Minority Media and Telecommunications Council); B.A. Oberlin College, 1971; M.S., University of Rochester, 1974; J.D., Georgetown University Law Center, 1983). Copy online at the Benton Foundation: <https://www.benton.org/sites/default/files/HonigFCCMinorityOwnership.pdf>.

C. The FCC Routinely Granted and Renewed Licenses of Intentional Discriminators, Thereby Making Possible Their Suppression of Minority Broadcast Participation

The FCC routinely granted, then renewed without investigation, the licenses of hundreds of radio and television stations owned by some of the most vicious segregationists in the nation—people who were never going to hire and train minorities, much less sell stations to them.

The FCC knew very well that it was regulating a segregated industry. FCC commissioners speak to state broadcast associations all the time. The commissioners could not have noticed that no minorities attended these meetings.¹⁰¹ Indeed, before and during the 1950s, the FCC continued to ignore even the most open and notorious discrimination. In 1956, almost every southern NBC affiliate refused to carry “The Nat King Cole Show”—forcing NBC to cancel the critically acclaimed program. Faced with this open and especially repugnant expression of race discrimination by dozens of its licensees, the FCC did nothing.^{102/}

102/ Actually, the FCC failed throughout nearly all of its history—not just the early years—to lift a finger to investigate or sanction intentional discriminators. The FCC

⁶ I want to make it clear that the types of attitudes and behavior described in this article quoted above were not involved in the vast majority of my dealings with FCC staff, who were fair and efficient. I have also not yet verified sources nor looked for positions that may be reported contrary to the above. However, based on the apparent credibility of the author as described and of the Benton Foundation, I quote these statements because the article points to certain attitudes and behaviors I have experienced directly in dealing with the FCC, especially in some matters with apparent, known “political” elements, in agency internal-defense issues, in actions to suppress “whistle blowing,” and in other actions the agency apparently sought to avoid.

could hardly have been unaware of how ironclad was the exclusion of minorities from broadcasting in the 1930s, 1940s and 1950s, nor could it not have known of the active role played by its leading licensees, CBS, and NBC. William Barlow explains:

As they rose to the pinnacle of power in the radio industry, both NBC and CBS followed what amounted to a Jim Crow policy with respect to the employment and portrayal of African Americans. Neither network hired blacks as announcers, broadcast journalists, or technicians, and certainly no blacks became producers or executives in the national operations. ...

....

WILLIAM BARLOW, *supra* note 96, at 27-28. ...

This illustrates a problem in many government agencies subject to direct or indirect political influence and funding decision making. Policies and standards -- easy to write to appear fair and useful -- are one thing, but their application or misapplication is often another thing. A healthy society and sound institutions require exercise by citizens of First Amendment and other rights to challenge government, for its own good (it is “of, by and for the people” if it is work), and those who do this often get retaliatory “push back” to chill the challenge.

The subject year-2018 Order, and the underlying year-2015 FCC 15M-14, are “push back” employing misstatements of facts and law, and avoidance of the real success by Petitioner in docket 11-71, in the face of nonfeasance by the FCC employees involved, including, among other things, (i) *avoidance* by the Enforcement Bureau (“EB”) and ALJ of the *core* evidence Petitioner found and presented, (ii) *avoidance* of any hint at sanctioning Maritime for falsely asserting it held valid stations nationwide for over a decade where that was false and fraudulent (shown only by Petitioner’s actions in 11-71) and (iii) EB taking the side of the accused, Maritime, calling that “prosecutorial discretion,” when that is unauthorized expenditure by government for a private party not authorized under the Communications Act or any law. And (iv) the ALJ in 15M-14 devised a new rule, adding to and deleting words from rule §1.251(f)(3) to attempt a basis for the Order 15M-14 referring a character qualification issue. The actual rule has no bearing on character qualification to hold licenses, and the Commission’s rule making orders on this rule show that (as Petitioner demonstrated in detail).

Petitioner was designated by the Commission in the HDO FCC 11-64 as a party, to co-prosecute the case for the Commission, and to benefit his interests and his companies, and he did that and succeeded. The EB and ALJ did not, but caused delays, compounding of the litigation, and then spuriously blamed their errors and failures on Petitioner.

Over years after FCC 15M-14, Petitioner has more fully described and documented the above in the proceedings leading to the Order. The Order does not show that the above is incorrect and thus effectively concedes these core issues of decisional importance and that lie at the heart of the FCC duties, law and the public interest involved.

It is clear to anyone that has or gets sufficient knowledge of the subject proceedings and actions of the FCC and of Petitioner described in the Order and its foundation, FCC 15M-14, that both of those Orders are wrong on facts and law, and avoid the salient nature, content and results of the proceedings involved where Petitioner and his companies prevailed in the range of 95%,

and were the means to achieve for the Commission success on “issue (g)” (the only issue in the HDO, FCC 11-64, that the ALJ would proceed with) and other public interest aspects.

The Commission knows, and it is reflected in this Order, that Petitioner “blew the whistle” as to the *ultra vires* rule change implemented at the end of Auction 61 (in which Maritime used a false unlawful bidding credit-- and thereafter was permitted to keep the results). This is indicated in the Order including its reference to the Ninth Circuit writ proceeding that Petitioner via counsel undertook that was dismissed as unripe and then carried into, as the Circuit Court suggested, further proceedings before the FCC to “exhaust administrative remedies.” Petitioner has clear legal standing and interest to proceed with that, under the applicable standing standard, in controlling court and FCC case precedents including *F.C.C. v. Sanders Brothers Radio Station*, 1940, 309 U.S.; *APCC Servs., Inc. v. AT&T Corp.*, 254 F. Supp. 2d 135; *Garner v. F.C.C.* 530 F.2d 1086 (1976).

///

CERTIFICATE OF FILING AND SERVICE

I, Warren C. Havens, certify that I have, on December 10, 2018: ^[*]1/

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing to the following: ^[*]2/

Marlene Dortch, Secretary

Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Jane Hinckley Halprin⁷

Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
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David Senzel

FCC Office of General Counsel
By email to: David.Senzel@fcc.gov

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^[*] 1. The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

^[*] 2. Petitioner does not believe other persons are parties in matters under the Order, and some listed above may not be or represent parties regarding the Order. If FCC staff reviewing this filing find that others are parties, I request to be informed of that and the basis.

⁷ December 1, 2018 replaced ALJ Richard Sippel.

⁸ A “separate team” for the inquiry described in the Order. Petitioner is not informed who the lead or others will be.

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(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed,^{[**]3/} provide notice and service to any party that has or may seek to participate in Dockets 13-85 and 11-71.

(3) Caused to be sent this filing via email to:

David Hunt, Inspector General, David.hunt@fcc.gov
Christopher Shields, agent, Christopher.shields@fcc.gov



Warren Havens

^{[**]3/} The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OGC does not apply a different standard to others. If OGC has a different standard, it can make that clear and public.